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May 28, 2002

Honorable Sylvia Rambo
United States District Court
Middle District of Pennsylvania
P.O. Box 983
Federal Building
Harrisburg, PA 17108

FILED
HARRISBURG, PA
MAY 30 2002

MARY E. D'ANDREA, CLERK
Per Deputy Clerk

Re: Allfirst Bank v. Ortenzio,
Case No. 1:01-CV-0786 (Judge Rambo)

Dear Judge Rambo:

I am writing in response to the letter dated May 23, 2002, which Plaintiff's counsel sent to Your Honor regarding the issue of whether Allfirst's lay witnesses will be permitted to provide expert testimony at the trial in this case.

While I recognize that Your Honor will address this issue at trial, I wanted to note the following:

1. In Defendant's Interrogatory No. 20, a copy of which is attached, Plaintiff was asked to identify all persons which it expected to call as expert witnesses, and for each person to set forth the opinions, etc. to which the experts were expected to testify. As Your Honor will note from the enclosure, Plaintiff answered that it had not yet determined which experts it would call to testify at trial and that they would be designated in accordance with the deadlines established in the Scheduling Order and that the information would be thereafter provided as required by Federal Rule 26(a)(2). To date, we have not received the opinions that we requested, except with respect to the Plaintiff's outside expert, Mr. Ralph Ferrell.

2. By letter dated February 5, 2002, a copy of which is attached, Plaintiff's counsel stated that the Plaintiff may provide "rebuttal testimony" from any of the Bank officers involved in this transaction, that Plaintiff was not obligated to provide any expert reports from Plaintiff's own personnel who may express opinions and that he would only provide reports from third party experts called as "rebuttal witnesses."

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3. By letter dated February 5, 2002, a copy of which is attached, I advised Plaintiff's attorney that Your Honor's Case Management Order required all expert reports of the Plaintiff to be filed on or before January 4, 2002, and rebuttal reports by February 18, 2002, whether or not they were employees of the Bank or third party experts. In fact, the Plaintiff never provided an expert report except for a rebuttal report from Mr. Ferrell.

In essence, it was the position of Plaintiff's counsel that he was not required to submit any expert reports with respect to the Bank's own personnel, who would be testifying as rebuttal witnesses only.

In his last letter to Your Honor, and as recently set forth in Plaintiff's Pretrial Memorandum, Plaintiff's counsel now takes the broader position that five of his fact witnesses should also be permitted to testify as experts on direct testimony, not just on rebuttal. Moreover, although Mr. Michael Zarcone, for example, is not an employee of the Plaintiff and we received no report from him, it appears that Plaintiff's counsel will be seeking to introduce his expert testimony at trial as well.

We will provide more information at the trial which will enable Your Honor to reach a decision with respect to the propriety of such fact witnesses testifying as experts at trial.

Your Honor's courtesy is appreciated.

Respectfully submitted,



EDWARD I. SWICHAR

EIS/pam

Enclosure

cc: Lawrence J. Gebhardt, Esq.

Defendant to the records and documents previously produced by Plaintiff.

INTERROGATORY NO. 18: Identify all documents that refer or in any way relate to Plaintiff's declarations of default (specifically, the defaults identified in paragraphs 20 - 21 of Plaintiff's Complaint), including, but not limited to, all communications, internal memoranda and analysis relating to same, as well as all witnesses with knowledge thereof.

ANSWER: Plaintiff responds to this interrogatory pursuant to *Fed. R. Civ. P.* 33(d) by directing Defendant to the records and documents previously produced by Plaintiff.

INTERROGATORY NO. 19: Set forth all facts and identify all documents, which support and/or evidence, your contention that Defendant is liable for costs and fees incurred by Plaintiff in connection with the CCI Bankruptcy Case, as alleged in paragraphs 23 and 24 of Plaintiff's Complaint.

ANSWER: See Answer to Interrogatory No. 6, 7, 11 and 12. Allfirst further responds to this interrogatory pursuant to *Fed. R. Civ. P.* 33(d) by directing Defendant to the records and documents previously produced by Plaintiff.

INTERROGATORY NO. 20: State the name, home and business address, and telephone number of all persons you expect to call as expert witnesses either on liability or on damages at the trial of this case, and for each person set forth the following: (a) Subject matter to which the expert is expected to testify; (b) The facts to which the expert is expected to testify; and (c) The opinions to which the expert is expected to testify.

ANSWER: Allfirst has not yet determined which experts it will call to testify at trial. Allfirst will designate its expert witnesses in accordance with the deadlines established in the Scheduling Order entered in this case and, upon such designation, will supplement its answer to this interrogatory, and provide the information required by Rule 26(a)(2) of the Federal Rules of Civil Procedure.

INTERROGATORY NO. 21: Set forth the balance under revolving line of credit prior to Defendant drawing the check as alleged in paragraph 15 of the Complaint.

FROM: GEBHARDT SMITH LLP

FAX NO.: 410 385 5818

02-05-02 10:54 P.02

LAW OFFICES

GEBHARDT & SMITH LLP

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WRITER'S DIRECT DIAL NUMBER:

February 5, 2002

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Writer's E-Mail Address:

lgebha@gebbsmith.com

Refer to File No. 19527

VIA FACSIMILE

Edward I. Swichar, Esquire
BLANK ROME COMISKY & MCCAULEY LLP
One Logan Square
Philadelphia, PA 19103

Re: *Allfirst Bank v. Ortenzio*
Case No.: 1:01 -CV - 0786 (Judge Rambo)

Dear Ed:

Having received the report of your expert witness, Donald C. Fruch, I am writing to request dates from you for his deposition.

Regarding the subject of expert witnesses, please be advised that the Bank may provide rebuttal testimony from any of the Bank officers involved in this transaction, including Gerard Elias, Jamin Gibson, Craig Swartz, and Daryl Myers. The rebuttal testimony would be directed to the issue of whether it is consistent with custom and practice in the banking industry to permit a borrower to repay a guaranteed credit facility with a draw upon an unguaranteed revolving line of credit shortly before the company announces that it is in financial distress. We also may present one or more third party experts as rebuttal witnesses on this issue. We do not believe we are obligated to provide any Rule 26(a)(2) report with respect to the Bank's own personnel who may express opinions, but we will provide a report from any third party expert called as rebuttal witnesses to the extent their testimony is to rebut matters raised in your expert's report. Obviously, we are entitled to present a rebuttal expert based upon the live testimony provided by your expert witness and we will not know what this live testimony is until it is given and cannot provide a report aimed at something not reflected in your expert's report.

I should also advise you that we intend to file a motion in limine objecting to Mr. Fruch's testimony as an expert to the extent he wishes to opine as to the meaning or interpretation of the loan documents. This is not a proper subject for experts testimony, and we will file a motion at the appropriate time.

FROM: GEBHARDT SMITH LLP

FAX NO.: 410 385 5018

02-05-02 10:54 P.03

GEBHARDT & SMITH LLP

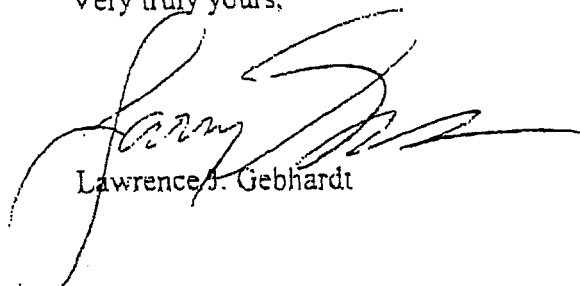
Edward I. Swichar, Esquire

February 5, 2002

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Finally, would you let me know as to the status of your efforts to locate Sherry Phillips and Shane Miller. We would like to set their depositions prior to the expiration of the discovery deadline.

Very truly yours,



Lawrence J. Gebhardt

LJG/cjl

cc: Jamin M. Gibson, Vice President
Gerard L. Elias, Senior Vice President

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February 5, 2002

VIA FACSIMILE

Lawrence Gebhardt, Esquire
Gebhardt & Smith, LLP
The World Trade Center, Ninth Floor
Baltimore, MD 21020-3064

Re: Allfirst Bank v. John M. Ortenzio

Dear Larry:

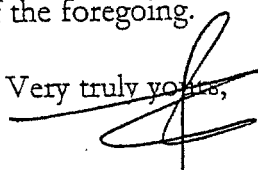
In regard to your letter of February 5, 2002, please give me your available dates through the end of the discovery period and I will thereafter coordinate with my expert.

Regarding the subject of expert witnesses, you state that the Bank may have rebuttal experts who will testify in regard to the custom and practice in the banking industry. It is my view that you are now required to provide me with any and all expert reports. Thereafter, I would want to depose your expert or experts as well. If, as it appears, you are refusing to refuse to provide me with a rebuttal expert report until after my expert provides live testimony, then your position would be, of course, without prejudice to my contrary position. In fact, I would seek to preclude your experts from testifying at trial unless I timely receive all of your expert rebuttal reports and be given the opportunity to timely depose them.

Needless to say, you are free to file a motion in limine, if you deem it appropriate. With respect to our efforts to locate Sherry Phillips and Shane Miller, please refer to Bob Burke's letter of January 23, 2002, which I believe responded to the same inquiry. We do not control these persons and you are free to contact them directly.

Please call me if you wish to discuss any of the foregoing.

Very truly yours,


Edward I. Swichar

cc: Robert A. Burke ✓